

## REMARKS/ARGUMENTS

### Status of the Prosecution

Claims 1 and 5 are now pending, claims 3 and 4 having been canceled. Claim 1 has been amended to incorporate the limitations of claim 4 and intervening claim 3. This amendment is believed to place the claims in condition for allowance, or reduce the number of issues for appeal. Applicant respectfully requests entry of the amendment.

### The Claims are Patentable Over Kapperman in View of Bentsen

Claim 1 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Kapperman *et al.* (U.S. Patent No. 6,004,032) ("Kapperman") in view of Bentsen (U.S. Patent No. 4,673,383) ("Bentsen"). The claims are directed to reclosable fasteners (or "zippers") comprising a male/female closure between a pair of opposed base members, the base members having interfitting male/female formations constituting the closure. A single flange for attachment of the closure to a web or film extends laterally from only one of the base members, and the base members are provided with ribs positioned at the margins of the respective base members. These are arranged to attach the fastener additionally to the web or film.

The reclosable fastener of the present invention has two base members which form the male/female closure and *a single lateral flange on one of the base members*. A purpose of the flange is to allow an initial attachment of the zipper to a web or film to which the zipper is to be fully attached. This is as stated in the patent specification at page 2, lines 1 to 4. This feature (see page 1, lines 19 to 21) provides the unexpected advantages of keeping heat and pressure away from the vulnerable male/female closure elements of the fastener, thus preventing damage to the closure elements. Such damage is highly disadvantageous as it results in wasted product and, very often, machine downtime.

For further attachment of the zipper to the film, the base members are provided with ribs arranged to attach the fastener to the web or film. The ribs are positioned at the margins of the base members in order to protect the male and female fastener elements further, as explained at page 3, lines 6 to 8. The fastener of the invention thus avoids damage by heat or

pressure during attachment to the web or film. According to claim 5, a row of sealant material is co-extruded onto each rib, to further enhance sealing.

Turning first to the deficiencies of the Kapperman reference, the flange identified by the examiner does not appear to be a flange which is capable of producing initial attachment to the wall. It is certain that Kapperman does not contemplate the initial attachment of that flange to a web or film and the subsequent attachment of the fastener base members. As the examiner concedes, Kapperman refers (at column 9, lines 44 to 45) simply to attachment in very general terms of the female profile to a package wall. Kapperman does not disclose any form of additional attachment means, least of all the ribs positioned as recited in amended claim 1. Additionally and importantly, Kapperman in no way enables such attachment by any such ribs.

The zipper shown in the Bentsen reference cannot be said to teach any flanges as defined in amended claim 1. Bentsen shows what is known as a 'string' zipper which is a zipper *without attachment flanges* and which is attached to a web or film *through its base members alone*. Thus, as is plainly shown in figure 1 of Bentsen, the Bentsen strong zipper has a width which is no greater than the width of the base members forming the male/female closure. What might appear to be lateral flanges at the upper right and lower left in figure 3 are themselves part of the closure base members, as can be seen when the parts are fitted together as in figure 1. Even if, *arguendo*, parts of the closure at the upper right and lower left of figure 1 are regarded as flanges, the closure would not have a single flange on one base member only as required by claim 1. Either way, Bentsen does not teach the flange of claim 1.

Since neither reference, nor the combination thereof, teaches or suggests a single flange which extends laterally from only one of the base members, wherein the base members are provided with ribs positioned at the margins and arranged to further attach the fastener to the web/film, the combination of Kapperman and Bentsen cannot render the instant claims obvious.

Further, the Office Action relies on ribs on the outer faces of the base members of the string zipper shown in the Bentsen reference. While ribs are apparently present, it must be noted that their purpose is entirely different from that of the ribs of the fastener of the present invention. Indeed, the purpose of the ribs of the Bentsen reference, as described at column 3,

lines 5 to 8, is that the ribs should fuse into a substantially continuous bonding layer between the base member surface and the substrate. This is clearly shown in Bentsen's figures (see figure 2 for the ribs in figure 1, and figure 4 for the ribs shown in figure 3).

There is no motivation to combine these references, and such combination can only result from prohibited hindsight. The Office Action alleges that it would have been obvious to read the Kapperman and Bentsen documents together and to modify the disclosure of Kapperman "so that ribs are used to secure the base member to the web or film." To the contrary, there is no reason whatever to read Bentsen and Kapperman in combination as each describes its own fully viable fastener device with its own reasons of attachment. Neither document poses or suggests any problem or has any shortcoming which is solved or overcome by the other document. There is no teaching or suggestion in Kapperman or Bentsen to motivate the skilled artisan to combine them, or which provide any expectation of success if they were combined. In the absence of such motivation to combine, the combination must be considered to result from impermissible hindsight reconstruction. Any combination in the absence of a "specific hint or suggestion in a particular reference" is thus necessarily the result of impermissible hindsight and is not a proper basis for a *prima facie* of obviousness. *In re Sang Su Lee* 277 F.3d 1338 (Fed. Cir. 2002).

In any event, if, for the sake of argument, the documents were combined in order to provide fusible sealing ribs of Bentsen on the fastener of Kapperman, this would be to provide the ribs which extend over the whole of the surface of the female fastener element of Kapperman, including its "flange" portion, as Kapperman takes no distribution between different transverse parts of its final zipper profile when it comes to attachment of the profile to a package (see column 9, lines 44 to 45 referred to by the examiner).

The combination of Kapperman and Bentsen, even if made, would not lead to the invention of claim 1, in which the attachment ribs are at the margin of both fastener base members. Accordingly, the invention is therefore not obvious over Kapperman and Bentsen in combination and claim 1 is allowable. Applicant respectfully requests reconsideration and the withdrawal of the rejection under 35 U.S.C. § 103 (a) in view of the above.

Claim 5 stands rejected under 35 U.S.C. § 103 (a) as allegedly unpatentable over the combination of Kapperman in view of Bentsen, and further in view of Custer *et al.* (U.S. Patent No. 5,216,787)("Custer"). For all the reasons stated above, Kapperman in view of

DOCKET NO.: THOM-0021  
Application No.: 10/070,937  
Office Action Dated: October 21, 2003

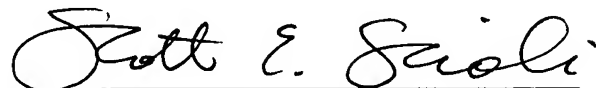
PATENT  
REPLY FILED UNDER EXPEDITED  
PROCEDURE PURSUANT TO  
37 CFR § 1.116

Bentsen do teach the underlying limitations of claim 1. The addition of Custer does not cure the deficiencies in the *prima facie* case. Since claim 5 is dependent on and includes all the limitations of claim 1, claim 5 is patentable over the combination of Kapperman in view of Bentsen and further in view of Custer. Further, Custer does not teach a sealant layer co-extruded with ribs as defined in claim 1. The addition of Custer forms the entirety of the ribs shown by Custer. The rejection of claim 5 must be withdrawn, and Applicant respectfully requests reconsideration resulting in such withdrawal.

### Conclusion

Applicant believes the amendments and arguments presented herein are fully responsive to the Office Action. Applicant respectfully submits that the claims are in condition for allowance. Early and favorable action in that regard are earnest solicited. The Examiner is invited to contact Applicant's undersigned representative to resolve any matters leading to the proper issuance of Applicant's claims.

Respectfully submitted,



Scott E. Scioli  
Registration No. 47,930

Date: February 23, 2004

Woodcock Washburn LLP  
One Liberty Place - 46th Floor  
Philadelphia PA 19103  
Telephone: (215) 568-3100  
Facsimile: (215) 568-3439